

REMARKS

This is a full and timely response to the Office Action mailed March 25, 2005, submitted concurrently with a three month Extension of Time to extend the due date for response to September 25, 2005.

By this Amendment, claims 1 and 7-9 have been amended to put the claims in better form and to more particularly define the present invention. Further, new claims 13 and 14 have been added to reintroduce the subject matter of previously canceled claims 2 and 12. Support for the claim amendments and new claims can be found throughout the specification and the original claims. Claims 1, 3, 5 and 7-14 are pending in this application.

In view of these amendments, Applicant believes that all pending claims are in condition for allowance. Reexamination and reconsideration in light of the above amendments and the following remarks is respectfully requested.

Objection to the Claims

Applicant has amended claims 1, 8 and 9 to address each issue raised by the Examiner. Specifically, claims 1, 8 and 9 have been amended to render moot the Examiner's concerns.

Rejections under 35 U.S.C. §112

Claims 1, 3, 5 and 7-12 are rejected under 35 U.S.C. §112, second paragraph, for alleged indefiniteness. Applicant respectfully traverses this rejection.

However, in order to expedite prosecution, Applicant has amended claims 1, 3 and 7 to clarify the claimed invention and to address the Examiner's concerns. Specifically, claim 1 has been amended to delete the term "*using*". Further, claim 3 does not need to be amended to clarify the presence of the promoter CaMV35S since vectors pIG121Hm or pBIGRZ have been deleted from claim 1. Also, claim 7 has been amended to be in independent form thereby overcoming the Examiner's concerns.

Thus, in view of these claim amendments, withdrawal of this rejection is respectfully requested.

Claims 1, 3, 5 and 7-12 are rejected under 35 U.S.C. §112, first paragraph, for allegedly lacking written description of the claimed invention. Applicant respectfully traverses this rejection.

However, in order to expedite the allowance of the present application, Applicant has amended the claims to direct to a “*polynucleotide comprising (1) the base sequence of SEQ ID NO. 3, or (2) a base sequence complementary to said base sequence of SEQ ID NO. 3*” which Applicant believes satisfy the written description requirement under U.S. practice.

Thus, withdrawal of this rejection is respectfully requested.

Rejection under 35 U.S.C. §103

Claims 1, 3, 5 and 7-12 are rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over Satoshi et al. (EP 0 860 499) in view of Hiei et al. (U.S. Patent 5,591,616). Applicant respectfully traverses this rejection.

To establish a *prima facie* case of obviousness, the prior art references must either alone or in combination teach or suggest the invention as a whole, including all the limitations of the claims. Here, Satoshi et al., either alone or in combination with Hiei et al., fails to teach or suggest the limitation “*polynucleotide comprising (1) the base sequence of SEQ ID NO. 3, or (2) a base sequence complementary to said base sequence of SEQ ID NO. 3*”.

Satoshi et al. only teaches the amino acid sequences of SEQ ID NO: 1 and 2, and their respectively cDNA sequences. Satoshi et al., either alone or in combination with Hiei et al., clearly does not teach or suggest a “*polynucleotide comprising (1) the base sequence of SEQ ID NO. 3, or (2) a base sequence complementary to said base sequence of SEQ ID NO. 3*”.


Thus, withdrawal of this rejection is respectfully requested.

CONCLUSION

For the foregoing reasons, all of the claims now pending in the present application are believed to be clearly patentable over the outstanding rejections. Accordingly, favorable reconsideration of the claims in light of the above remarks is courteously solicited. If the Examiner has any comments or suggestions that could place this application in even better form, the Examiner is requested to telephone the undersigned attorney at the below-listed number.

Dated: September 26, 2005

Respectfully submitted,

By 

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Should additional fees be necessary in connection with the filing of this paper, or if a petition for extension of time is required for timely acceptance of same, the Commissioner is hereby authorized to charge Deposit Account No. 180013 for any such fees; and applicant(s) hereby petition for any needed extension of time.